



Tennessee State Board of Accountancy
Department of Commerce and Insurance

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MINUTES

TENNESSEE STATE BOARD OF ACCOUNTANCY MEETING

August 23, 2004

The meeting of the Tennessee State Board of Accountancy convened in the Davy Crockett Tower, Nashville, Tennessee on Monday, August 23, 2004, at 10:00 am.

Members present were Micheal Vaughn, Chairman; Mark King, Vice-Chairman; Charles Frasier, Secretary; Charles Grant, David Curbo, L. Dan Johnson, Kenneth Cozart, Max Haught, and Robert Davidson.

Also present were Linda Biek, Executive Director; M. Connaught O'Connor, Staff Counsel; Leona Johnson, Administrative Assistant; Mark Crocker, Investigator; Dan Syriac, Administrative Manager; Carole Briggs, court reporter; James A. Hornsby, Administrative Judge; Frank J. Scanlon, Attorney; Edwin P. Osborne, CPA; Brad Floyd, Executive Director of the TSCPA; Paula Flowers, Commissioner of Commerce & Insurance; Robert Gowan, Assistant Commissioner of Commerce & Insurance; Mary Moody, General Counsel for Commerce & Insurance and Barry Woody, Executive Director of the Motor Vehicle Commission.

Micheal Vaughn called the meeting to order at 10:00am. Mr. Vaughn asked for a motion to approve the minutes of the June 28, 2004, Board meeting. Max Haught motioned to approve the minutes of the June Board meeting. Mark King seconded the motion; it was voted on and passed.

Linda Biek introduced the newest member of the board staff, Mark Crocker, Investigator. The Board Members welcomed Mr. Crocker.

FORMAL HEARING:

Micheal Vaughn turned the floor over to Judge James Hornsby. Judge Hornsby informed the Board Members that he was assigned by the Secretary of State's Office to be Judge in this case and introduced Mr. Frank Scanlon as Attorney for the defendant. Judge Hornsby made opening remarks and asked the Board Members to introduce themselves for the record. David Curbo recused himself as he had an Informal Conference with the defendant relative to the matter before the Board today. Judge Hornsby asked Mr. Curbo to step down into the audience. Micheal Vaughn pronounced there was a quorum of the Board present. Connaught O'Connor represents the State and the respondent is represented by Frank Scanlon. Judge Hornsby read the contents of the technical record and then swore oath on the testifying individuals.

Connaught O'Connor distributed copies of the Notice of Hearing to the Board Members, see attached #A. Connaught O'Connor entered Exhibit #1 and Exhibit #2 into evidence, see attached copies. Ms. O'Connor informed Judge Hornsby that she would not need Mr. Barry Woody to testify and asked if he could be excused to leave. Connaught O'Connor made her opening statement informing the Board that Mr. Osborne's CPA certified expired on December 31, 1993, since that time he has issued two compilation reports which were presented to the Motor Vehicle Commission. She also conveyed to the Board that the respondent is responsible for notifying the board office of any address changes and he is responsible for renewing his certificate and to.

Mr. Scanlon made his opening statement informing the Board that Mr. Osborne lived in Kentucky in 1990 when he first applied for his reciprocal Tennessee CPA certificate. Mr. Osborne renewed his TN CPA certificate in 1990 and again in 1991 for years 1992-93. Mr. Osborne moved and lived in Florida from 1996 to 2000. Upon his return to the state of Tennessee he did not need a CPA certificate for the type of work he was doing. Mr. Osborne then went to work for Access Med Plus at which time he completed a second reciprocal application for a TN CPA certificate and turned the application in to Access Med Plus for payment to be approved and forward to the Tennessee State Board. In 2001 Mr. Osborne moved back to Morristown and took over a small tax practice of his fathers upon his father's death. The compilation reports issued were for two of these tax clients. Mr. Scanlon conveyed to the Board that this was an isolated and unintentional incident and that it is the Board's responsibility to protect the public but it is also their responsibility to be fair and just to Mr. Osborne and not penalize him today.

Charles Grant, attorney member of the board, informed the Judge that his firm has done work for Access Med Plus. The Judge asked the defendant and Mr. Scanlon if they wanted Mr. Grant to recuse himself and step down. Mr. Grant was authorized to stay.

Connaught O'Connor called Mr. Osborne to the stand and he gave testimony to questions from Ms. O'Connor. Judge Hornsby then opened the floor to the Board Members for questioning. Once the Board Members completed their questioning, Ms. O'Connor asked a few follow up questions. Mr. Osborne was then directed by Judge Hornsby to step down.

Connaught O'Connor called Ms. Linda Biek to the stand and she gave testimony to questions from Ms. O'Connor and also from Mr. Scanlon. Judge Hornsby then opened the floor to the Board Members for questioning. Once the Board Members completed their questioning, Ms. O'Connor and Mr. Scanlon each asked a follow up question. Ms. Biek was then directed by Judge Hornsby to step down.

At this time the judge asked if Ms. O'Connor had any other proof. Her response was NO.

Mr. Scanlon was then instructed to call his first witness. Mr. Scanlon called Mr. Osborne back to the stand and instructed him that he was still under oath. Mr. Osborne gave testimony to questions from Mr. Scanlon and Mr. Scanlon entered into evidence Exhibit #3 (see attached a copy of Mr. Osborne's resume'), Exhibit #4 (see attached a change of address form) and Exhibit #5 (see attached a copy of a fax and reinstatement application). Once Mr. Scanlon was finished with his questioning, Ms. O'Connor asked Mr. Osborne a few questions and then the Judge opened the floor to the Board Members for questioning. The Board Members asked several questions of Mr. Osborne. Judge Hornsby then asked Mr. Scanlon if he had any further questions. Mr. Scanlon responded he did not, the respondent rests.

Ms. O'Connor called Ms. Biek to the stand as a rebuttal to testimony Mr. Osborne gave while on the stand as Mr. Scanlon's witness. The Judge instructed the Board Members to weigh the evidence as they deem appropriate. Ms. O'Connor entered Exhibit #6 (see attached copy of RBS screen) into evidence. At this time, Ms. O'Connor announced the State rests and Judge Hornsby instructed Ms. Biek to step down.

Ms. O'Connor and Mr. Scanlon gave closing statements then Ms. O'Connor passed out the Proposed Finding of Facts & Conclusion of Law, see attached #B. The Judge directed the Board Members in their decision regarding the Law & Rules to make findings of fact solely by the evidence presented in this hearing. All motions must carry by majority of the Board.

Findings of Fact

The Board Members reviewed the findings of facts below and voted on each one individually as follows:

- 1) At all time pertinent hereto, Respondent did not hold an active certificate as a Certified Public Accountant. Respondent was first licensed as a CPA by the Tennessee State Board of Accountancy on or about April 28, 1990, granted certificate number 11166. Respondent's certificate expired on December 31, 1993 and he did not renew his certificate thereafter. Micheal Vaughn, Board Chair, called a roll cal vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.
- 2) Respondent's firm is not now, nor has it ever been, registered as a CPA firm with the Tennessee State Board of Accountancy. Micheal Vaughn, Board Chair, called a roll cal vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.

- 3) On or about February 15, 2002, the Respondent issued a compilation report on a balance sheet as of December 31, 2001 for Mr. Jimmy Adams, Morristown, Tennessee. Micheal Vaughn, Board Chair, called a roll call vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.
- 4) On or about February 15, 2002, the Respondent also issued a compilation report on a balance sheet as of December 31, 2001 for Jake and Kathy Adams, Morristown, Tennessee. Micheal Vaughn, Board Chair, called a roll call vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.
- 5) The letterhead on both compilation reports have the Respondent's name, Edwin P. Osborn and the title "Certified Public Accountant" printed under his name. The letterheads show his address as 252 Callaway Drive, Morristown, Tennessee 37814, Post Office Box 1811, Morristown, Tennessee 37816-1811 and phone number as (423) 312-9111. Micheal Vaughn, Board Chair, called a roll call vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.
- 6) The Respondent practiced with an expired CPA license and with a firm registration by issuing two (2) compilation reports. Micheal Vaughn, Board Chair, called a roll call vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.
- 7) The Respondent is now and has been duly licensed as a CPA in Kentucky from 1981 to the present. Micheal Vaughn, Board Chair, called a roll call vote and this finding of fact was approved by a vote of seven (7) Yes and zero (0) No.

Conclusion of Law:

- 1) Respondent's acts and conduct constitute violation(s) of Tenn. Code Ann. § 62-1-113(a) and (c), the relevant portion of which reads as follows:
 - (a) Only licensees may issue a report on financial statements of any other person, firm, organization, or governmental unit or otherwise offer to render or render any attest service, as defined herein...
 - c) No person not holding a valid certificate shall use or assume the title "certified public accountant," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

Micheal Vaughn, Board Chair, called a roll call vote and this conclusion of law was approved by a vote of six (6) Yes and one (1) No.

- 2) Respondent's acts and conduct constitute violation(s) of Tenn. Code Ann. § 62-1-113(d), the relevant portion of which reads as follows:
 - d) No firm shall provide attest services or assume or use the title "certified public accountants," or the abbreviation "CPAs," or any other title, designation words, letters abbreviation, sign or card, or device tending to indicate that such firm is a CPA firm unless

(1) The firm holds a valid permit issued under § 62-1-108.

Micheal Vaughn, Board Chair, called a roll call vote and this conclusion of law was approved by a vote of seven (7) Yes and zero (0) No.

- 3) Respondent's acts and conduct constitute violation(s) of rule 0020-4-.03(1)(c), the relevant portion of which reads as follows:

'Violations of this Act or of rules promulgated under the Act include but are not limited to:

 1. Using of the CPA or PA title or providing attest services in this State without a certificate, registration or permit to practice or without properly qualifying to practice across state lines under the substantial equivalency provision of this Act;'

Micheal Vaughn, Board Chair, called a roll call vote and this conclusion of law was approved by a vote of six (6) Yes and one (1) No.

At this point Robert Davidson motioned to open evidence to find out how much money Mr. Osborn has paid thus far. Mark King seconded the motion; it was voted on and approved. Mr. Osborn indicated he had paid \$700 on his reinstatement application of March 2002.

Disciplinary Action the Board Intends to Take:

Kenneth Cozart motioned for the Board to apply the \$700 previously paid to bring Mr. Osborn's CPA license #11166 up to date and current through 12-31-2004. Mr. Osborn shall complete the firm registration form to register his firm for 2003 & 2004 and pay the firm fees. Max Hought seconded the motion; it was voted on by roll call with all votes affirmative.

Policy Statement:

Charles Grant motioned to adopt the following policy statement. The Tennessee State Board of Accountancy is charged with the duty to regulate the practice of Accountancy in the State of Tennessee and to protect the public of this State. The statutory requirement that prohibits a non-licensed person from practicing public accountancy by performing attest services and using the CPA designation on an expired CPA license and without a firm registration protects the public by ensuring that public accounting services are performed by a licensed Certified Public Accountant or Public Accountant who is required to meet certain standards and requirements. In the case of Edwin P. Osborne, the Board finds Edwin P. Osborne violated the referenced State Accountancy Law and Rules cited above. Ken Cozart seconded the motion; it was voted on and approved by roll call vote of six (6) Yes and one (1) No.

Mary Moody, General Counsel for Commerce and Insurance along with Commissioner Paula Flowers and Assistant Commissioner Robert Gowan held an open session with the Board Members to answer any questions regarding the events and steps related to the termination of Darrel E. Tongate from his position as Executive Director for the Accountancy Board.

The Board Members then held an Executive Session, closed to the board staff.

Micheal Vaughn re-convened the board meeting and presented David Curbo with an award of service as Chair from 2003-2004.

Linda Biek presented the Executive Director's Report: (see attached report)

- 1) Linda announced that Mark Crocker has joined the Board as the Investigator and asked the Board to welcome him.
- 2) Linda announced the next following Board Meeting dates:
 - Monday, November 22nd, 2004
 - Monday, January 24th, 2005
 - Friday, April 29, 2005
 - Tuesday, June 21, 2005 (The TSCPA Conference is in June in Johnson City, I am trying to get approval to hold the board meeting in Johnson City on 6-21-05)
- 3) If the Accountancy law is opened in 2005, it needs to be reworded to properly reflect reciprocity, substantial equivalency and notification. Some rules also need to be cleaned up.
- 4) Please approve the CBT CPA exam grades from the first window. Robert Davidson motioned to approve the CPA exam grades from the first window. David Curbo seconded the motion; it was voted on and approved.
- 5) Please review the preliminary budget attached. David Curbo motioned to approve the budget as amended here today. Charles Grant seconded the motion; it was voted on and approved.
- 6) NASBA Committee positions are open; let me know if you are interested.
- 7) The Accounting Licensee Database (ALD) Task Force is moving along as planned. Dan and Linda have attended a brainstorming session and the next meeting is August 25-26 at NASBA.
- 8) NASBA's annual conference will be in Chicago from October 17-20. Let me know if you are interested in attending. Typically the administration will allow 2 attendees.
- 9) The renewal form has been sent to IS and is ready to be issued. An informational letter will be sent out in September to remind licensees of the upcoming renewal. I would like to put a CPE reporting form on the web for licensees to use and to encourage early CPE reporting.
- 10) Please see attached NASBA Focus Questions. The Board discussed and approved answers to questions 2, 4 & 5 and to have Micheal Vaughn and Linda Biek respond to questions 1 & 3.

- 11) SOX Section 104 requires that the PCAOB send detailed firm inspection reports to the accountancy board of every state in which the firm practices. PCAOB wants these reports to remain confidential, does the Board also? YES.
- 12) A draft of the rules showing proposed changes will be forth coming. The Board held a brief discussion of rules that need to be edited.
- 13) Will Pugh as been appointed as a member of the CPA Examinations Review Board (ERB).
- 14) Is anyone interested in doing a site visit to Prometric now that the exam is in effect? Board members will e-mail Linda if they are interested in visiting one of the sites.
- 15) Please review FYI section and let me know if you have any questions.

Connaught O'Connor presented the Attorney's Report/Probable Cause Committee report (copy attached). Board Members reviewed cases as listed on the report and gave recommendations of action to the Board. The following are amendments made to that report: Case #3 – Micheal Vaughn recommended adding 'and tax returns' after the word engagement. Case #4 – Micheal Vaughn recommended to charge a \$200 civil penalty. Case #5 – Micheal Vaughn recommended a Consent Order with no Civil Penalty and an agreement to Cease and Desist. Case #6 – Ken Cozart recommended to dismiss with a letter of warning. Case #8 – Robert Davidson recommended a Consent Order with a Cease and Desist order and 16 additional hours of CPE. Case #12 - - Mark King recommended to close this case and to notify the other state. Case #13 – Mark King recommended an Informal Conference. Case #14 – Mark King recommended to dismiss this case. Case #15 – Mark King recommended a Consent Order for \$100 and require the firm to register. Case #16 – Mark King recommended closing this case. Case #20 – Mark King recommended closing this case. Case #21 – Micheal Vaughn recommended an Informal Conference. Case #22 – Mark King recommended Litigation Monitoring for this case. Case #25 – David Curbo recommended an Informal Conference. Case #37 – The individual signed a Consent Order and paid \$500 Civil Penalty. This case was approved to be closed at this time. Cases #41-53 were approved to be sent to investigations. The remainder of the case report shall be approved as written. Mark King motioned to approve the Probable Cause Committee Report and recommendations as amended. Dan Johnson seconded the motion; it was voted on and approved.

Charles Frasier presented the CPE Committee Report. (Report attached) Mr. Frasier reported the following three CPE items and the committee's decisions.

- 1) When asked to approve the CPA exam scores, the Committee would like to actually examine and look at the listing.
- 2) CPAES has requested additional guidance from the state board as to classes that qualify as substance courses to complete the 150 hours required for sitting for the CPA exam. A lengthy discussion took place before the Board decided that these need to be handled on an individual basis. Each request shall be referred to the CPE Committee via e-mail for them to decide upon.
- 3) Charles Frasier made a motion to approve the issuance of 42 new CPA certificates and 40 reciprocal CPA certificates whose experience and other qualifications have been approved by the Board's staff. Dan Johnson seconded the motion; it was voted on and approved.

David Curbo presented the Peer Review Committee Report. He reported that 443 firms are due peer reviews in 2004. Of those, 290 are scheduled, completed or exempt and 153 have not responded. Mr. Curbo informed the Board that the approved reviewers have been sent notice to have evidence of update reviewer course in the Board office by September 30th or they will be removed from the approved reviewer list. Sixteen (16) new firms have registered since the last Board Meeting. The new initial firm application and the new firm renewal application are in place and being used. The peer review 'Review Committee' will meet on September 20th to approve 2004 TSBA Peer Reviews. The application for individuals interested in being on the 'Review Committee' is complete and needs to be approved here today. David Curbo motioned to approve the Review Committee Application. Micheal Vaughn seconded the motion; it was voted on and approved. This application will be mailed to each reviewer listed on the Boards Approved Reviewer List and to the three-member Review Committee now in service. New UAA rules will need to be studied by our Legislative Committee to see if we need any Law and/or rule changes .

Old Business:

David Curbo drafted a motion as a recommendation of a fair and reasonable settlement for Darrel Tongate. Mr. Curbo read the motion aloud to the Board Members and Dan Johnson seconded the motion. After a lengthy discussion the Board Members decided not to go forward with this at this time and David Curbo withdrew his motion.

New Business:

Max Haight asked the Board Members to review Linda Biek's performance as Executive Director.

Micheal Vaughn asked Linda to schedule an additional half day at the next board meeting in order for the Board Members to conduct informal hearing and review probable cause cases.

There being no further business to come before the Board Micheal Vaughn motioned to adjourn the meeting. Dan Johnson seconded the motion and the meeting was adjourned.

CHAIRMAN

SECRETARY